In The

Supreme Court of the United States

OCTOBER TERM, 1975

Supreme Court, U. S.
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No. 75-1112

GULF OIL COMPANY—U.S., a Corporation, a/k/a GULF OIL CORPORATION, a Corporation, and THE PITTSBURG & MIDWAY COAL MINING CO., a Corporation,

Petitioners,

vs.

PALMER COAL & ROCK COMPANY, a Corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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SUMMARY OF CASE AND POST-TRIAL EVENTS

Respondent (Plaintiff below) deems the "Statement of the Case" set forth in the Petition incomplete and is therefore constrained pursuant to Rule 40(3) of the Rules of the Supreme Court to present the following summary of the case.

This case arose as an action in the United States District Court for the District of Kansas to recover damages suffered by the plaintiff as a result of reliance upon a fraudulent misrepresentation made by the defendants.

Plaintiff was a small coal mining company incorporated under the laws of Kansas in 1966.

Defendants Gulf Oil Company and one of its wholly owned subsidiaries, The Pittsburg and Midway Coal Mining Company, are both corporations, and both are herein referred to as "Gulf".

In the early part of 1967, plaintiff began coal mining near Fort Scott, Kansas, having purchased mining equipment through loans guaranteed by the Small Business Administration which eventually totaled $225,000.00. During the year 1967 and the first part of 1968, plaintiff's mining operation expanded and production steadily increased (R. 19-20, 25-26, 33-34).

During 1968 Gulf, having decided to acquire additional land for mining coal, sent agents to the Fort Scott, Kansas area to obtain options for purchase of coal land (R. 658).

In April of 1968 plaintiff learned that Gulf's land agents were attempting to obtain an option to buy the coal land immediately adjacent to plaintiff's mine. (R. 39).

Plaintiff had been trying to obtain the same land for itself and was alarmed by Gulf's attempt to purchase the land (R. 39).

Plaintiff's vice-president, Harold Card, contacted James A. Miner, vice-president of Gulf's subsidiary, Pittsburg & Midway Coal Mining Company, who had been given responsibility for securing new coal reserves in the Fort Scott area. Mr. Card demanded to know what Gulf's intentions were and how Gulf's operations might affect the plaintiff (R. 41, 655).

Miner, who was concerned, as it later developed, with antitrust problems, assured Mr. Card that Gulf

had no intention of harming the plaintiff and offered to come to Fort Scott to discuss the threat posed to plaintiff by Gulf's plans to acquire coal lands (R. 41).

Card testified that when he and Miner met at the Downtowner Hotel in Fort Scott he explained to Mr. Miner that the plaintiff was conducting a small mining operation; that it had borrowed heavily to expand it, and had intentions of continued expansion; and that it could not hope to compete with Gulf, which was offering bonus prices for the available coal reserves around plaintiff's mine (R. 45).

Miner stated to Card that it was Gulf's intention to acquire all the coal reserves it could in the area, but that it was not Gulf's intention to harm plaintiff's company. Miner suggested that the plaintiff "could be of great help" to Gulf in acquiring the coal land options which Gulf wanted, due to the fact that plaintiff's officers were local residents, acquainted with (and trusted by) the local landowners (R. 44).

After some discussion of such cooperation, Miner stated that if plaintiff's officers and employees would assist Gulf in obtaining options to purchase coal land, Gulf could set aside sufficient coal reserves to enable plaintiff to continue in the business of mining coal, or, if the plaintiff preferred, Gulf could buy the plaintiff out (R. 45).

Card then asked Miner if he would mind discussing the proposal with Mr. Dotson, the banker through whom the SBA loans had been placed. Miner agreed, stating that he would be willing to "put it in writing" but that a written agreement would "constitute more problems". Card agreed that a repetition of the proposal in front of the banker would suffice and the two men went directly to the bank (R. 45-46).

Card testified that, at the bank, Miner assured the banker and Card that if plaintiff didn't want the coal reserves, then Gulf would buy the plaintiff out, see to it that plaintiff and its stockholders lost no money, and the bank lost no money, stating that the bank and the plaintiff "had nothing to worry about" (R. 47).

The banker, Floyd Dotson, testified that Miner was told of the SBA loan in the amount of $225,000.00 and of the amount of the investments of plaintiff's stockholders. Miner, after repeating Gulf's request for plaintiff's help, stated that his company would be willing, at plaintiff's option, to protect plaintiff from damage by paying plaintiff's liabilities to its creditors and stockholders or giving plaintiff coal land (R. 171, 241).

After meeting at the bank with Mr. Dotson, Card and Miner proceeded to plaintiff's mine, where Miner repeated to plaintiff's president, Bill Palmer and to Margaret E. Palmer, both of whom testified at the trial, the offer made in the meeting at the bank (R. 427-428, 506-507).

The next day, after a meeting of its stockholders, plaintiff advised Miner that the plaintiff would accept Gulf's proposal and assist Gulf in obtaining the coal reserves (R. 49).

Eleven different witnesses testified that during 1968, the plaintiff assisted Gulf in obtaining options for the purchase of 13,560 acres of coal-bearing land in the vicinity of plaintiff's mine. Plaintiff's aid in reliance upon Gulf's offer is not disputed.

In December 1968, defendants took the field by exercising the bulk of their purchase options. Herman E. Knight, one of Gulf's officers, testified that Gulf purchased the fee title to 6,941 acres in the area for a sum in excess of $2,225,000 (R. 738).

Also during the Fall of 1968, the SBA started pressing plaintiff for payment of its loans, and in January of 1969, a meeting was held at the SBA offices in Kansas City, Missouri to discuss Gulf's obligations to plaintiff.

Early in the meeting, when Floyd Dotson said to Miner, "Jim, it is time for you to live up to your agreement in this thing now", Miner's reply was, "Well, gosh *we couldn't buy you out anyway*, we would be violating the anti-trust or the anti-trust regulation" (R. 72, 436) (Emphasis added).

Up to that point in the SBA meeting no one at the meeting had characterized the proposal made by Gulf as a promise to "buy out" the plaintiff. Miner was the first person present to so define the proposal which the plaintiff had accepted.

Card and Palmer, as well as Dyce Bonham and Wallace Buck, officers of the SBA, testified at the trial that, during this meeting, Card accused Miner of failing to perform the promise of financial protection which he had made to the plaintiff on behalf of Gulf in May of 1968 and neither Miner, nor the other two representatives of Gulf who were present at the SBA meeting, denied making the promise (R. 72-73, 343, 397-398, 436).

Plaintiff subordinated its own interests to those of Gulf in reliance upon Gulf's promise of financial protection and, as a result, plaintiff's business operation deteriorated to the point that plaintiff's business was completely destroyed, all of plaintiff's liabilities

($291,136.00) remained unpaid, and all of plaintiff's stockholders' investments ($175,695.50) were lost (Defendant's Ex. N; R. 139-140, 381).

Plaintiff called a total of fifteen witnesses to present testimony on the foregoing chain of events. In response to plaintiff's evidence, the defendants relied primarily upon the testimony of James A. Miner.

In his testimony, Miner admitted receiving the initial telephone call from Card expressing concern as to Gulf's activities around plaintiff's mine (R. 658) and admitted meeting with Card at the Downtowner Hotel in Fort Scott, Kansas. He stated that he "made no deals of any kind" with Mr. Card (R. 699), but later recanted and testified that he *had* made a deal, "right in front of Card" (R. 699).

Admitting that he attended the meeting at the bank with Card and Dotson, Miner denied any discussion of purchasing the plaintiff (R. 666), but later recanted on cross-examination, and admitted making the promise to the plaintiff at said meeting, which he characterized as consisting of assuring the plaintiff of continued land reserves "or any other request they might make" (R. 697). Miner denied repeating his promise (to purchase the plaintiff) in the presence of Bill and Margaret Palmer, directly contradicting their testimony (R. 689).

Miner testified that at no time did the defendants have any intention of buying out the plaintiff (R. 678).

In addition, the jury heard evidence that defendants had made no pretense of performing their promise of May 1968 and had, in fact, refused to so perform (R. 779-780).

The testimony, as pointed out by counsel for both sides in closing arguments, presented clearcut issues of credibility and fact for the jury to determine.

The trial court submitted the issues to the jury under instructions specifically setting out the elements to be proved to establish fraud under Kansas law (A. 5).

The court also instructed the jury that "The law of the State of Kansas requires that to prove fraud it is necessary for the party claiming fraud to prove it by evidence that is clear and convincing; thus, in this case, plaintiff must persuade you of the truth of its claim of fraud by clear and convincing evidence" (R. 814). The court then defined that phrase for the jury as follows:

> To be clear and convincing, evidence should be clear in the sense that it is certain, plain to the understanding, unambiguous and convincing in the sense that it is so reasonable and persuasive as to cause you to believe it (R. 814).

Gulf made no objection to any instruction given to the jury by the trial court, *nor did it request that any additional instructions be given.*

The case was then submitted to the jury which returned a verdict for the plaintiff in the sum of $500,000 actual damages and $1,500,000 punitive damages. The verdict for actual damages was later reduced by the trial court to $466,831.50 upon motion by Gulf.

Thereafter, Gulf filed a motion for judgment notwithstanding the verdict or for a new trial. After

hearing oral arguments on the motion, the trial judge, the Honorable Earl E. O'Conner, denied defendants' motion, *holding that the verdict rendered by the jury was supported by clear and convincing evidence,* specifically citing the Kansas case, *Fox* v. *Wilson,* 211 Kan. 563, 507 P. 2d 252 (1973) (A. 13).

Thereafter, Gulf perfected its appeal to the Tenth Circuit Court of Appeals claiming that the trial court had erred in denying its motions attacking the sufficiency of plaintiff's evidence and in refusing to grant judgment notwithstanding the verdict.

The decision of the Court of Appeals, written by The Honorable David T. Lewis, Chief Judge, affirmed the rulings of the trial court, stating *inter alia,* ". . . we conclude that plaintiff made a case and, indeed, a *strong* case. Falsity, inducement, reliance and damage are *manifest* . . ." (Emphasis added) (A. 10).

The Court of Appeals also stated, in affirming the trial court's rulings, "The trial court submitted the issues to the jury under instructions specifically setting out the elements allowing recovery for actionable fraud *under Kansas law* and to which no objections were taken" (Emphasis added) (A. 5).

The Court of Appeals reviewed the record of the trial, consisting of 825 pages of testimony and then commented, "*We are fully satisfied,* as was the trial court, that the evidence is completely adequate to support recovery . . ." (Emphasis added) (A. 6).

Gulf then filed a Motion for Rehearing, which was denied by the three-judge panel which had heard the oral arguments, and a Request for Hearing En Banc, which was unanimously rejected by the seven

judges comprising the Tenth Circuit Court of Appeals (A. 1).

Gulf then filed its petition for a writ of certiorari before this Honorable Court.

REASONS FOR DENIAL OF THE WRIT

I.

Evidence presented at trial, but omitted from petitioners' request for a writ of certiorari, fully satisfied the "clear and convincing" requirement of Fox v. Wilson.

Petitioners seek to persuade this Court to grant a writ of certiorari by directing the Court's attention to isolated portions of the testimony of one of plaintiff's fifteen witnesses, Harold Card. They state that the *portion* of Card's testimony *set forth in their petition* was "crucial" to plaintiff's case and was offered as the sole proof of the misrepresentation made to the plaintiff by Gulf.

Petitioners then argue that since the *portion* of Card's testimony which they have chosen to include in their petition, did not establish that a definite purchase offer had been made, the "lower courts", as a matter of law, must not have applied the Kansas test (requiring "clear and convincing evidence") and must, therefore, have applied a different test in contravention of the doctrine expressed in *Erie R. Co.* v. *Tompkins,* 304 US 64 (1938), and subsequent cases.

The "lower courts", of course, in reviewing the 825 page transcript of the trial, considered *all* of Mr. Card's testimony as well as the other fourteen witnesses called by the plaintiff, three of whom testified concerning Gulf's promise to the plaintiff.

While plaintiff does not believe it necessary for the United States Supreme Court to conduct yet another review of the evidence (since the jury, the trial judge and the Court of Appeals have already done so, to their collective satisfaction) plaintiff feels constrained by the misleading presentation of the evidence contained in the petition for certiorari, to advise this court of the more significant portions of the evidence which were omitted therein by the petitioner.

In summarizing Mr. Card's testimony, petitioners omitted the testimony of Harold Card concerning the events which transpired *subsequent* to his initial cup of coffee with Gulf's representative, Mr. Miner, at the Downtowner Hotel in May of 1968.

Petitioners omitted the testimony given by Mr. Card that, immediately after the meeting at the Downtowner, he and Mr. Miner went to the bank where Miner was told of the nature and extent of the plaintiff's financial liabilities and also the amount of the investments which had been made by its stockholders (R. 47).

Petitioners omitted the testimony of Floyd Dotson, the banker, which confirmed that Mr. Miner, in the meeting at the bank, made an offer to financially protect the plaintiff and its stockholders and further gave assurances to the plaintiff's banker and Card that "the bank wouldn't lose any money", the stockholders would lose no money and [they] had "nothing to worry about" (R. 171, 241).

Petitioners also omitted testimony that, subsequent to the meeting at the bank, Mr. Miner and Mr. Card went to the plaintiff's mine where they met with Bill and Margaret Palmer, the plaintiff's

president and his wife, and engaged in a further discussion of Miner's offer. It was the testimony of Bill Palmer and Margaret Palmer, that Miner repeated what had now grown into a definite offer of financial protection, stating that, at the plaintiff's option, Gulf would either "carve out" coal reserves for the plaintiff's use in its operation or, if plaintiff preferred, Gulf would financially protect the plaintiff's stockholders by reimbursing them for their investments and see that plaintiff's liabilities were fully satisfied, if plaintiff would cooperate with Gulf. This was the same assurance of financial protection that he had initially suggested at the Downtowner meeting and made as an offer at the meeting with plaintiff's banker (R. 427-428, 506-507).

Petitioners further omitted Mr. Card's testimony that the plaintiff's stockholders and officers held a meeting and the next day informed Miner that the plaintiff had chosen to accept the offer made in front of the banker and at the mine site and would furnish Gulf the requested assistance in obtaining land options in exchange for the assurances which Miner had given to them (R. 49).

Finally, petitioners have omitted testimony of Dyce Bonham and Wallace Buck, as well as Card and Palmer, that at the meeting held by SBA in January 1969, Miner had characterized his offer to plaintiff as a promise to "buy you out" and that neither he nor two other Gulf officers present denied that the promise had been made, when confronted with such accusation (R. 72-73, 343, 397-398, 436).

This additional testimony, omitted from petitioner's request for a writ of certiorari, certainly satisfied the

"clear and convincing" requirement of Kansas law. The trial judge, in ruling on the motions by the petitioners for judgment notwithstanding the verdict, stated his own satisfaction that the evidence was "clear and convincing" and did not, of course, restrict his evaluation of the evidence solely to that portion of Mr. Card's testimony which petitioners have set forth in their request for a writ of certiorari.

Although petitioners assert that there is "no evidence in the record" to establish that Gulf "took the field" [which they contend was a condition precedent to any obligation on their part to financially protect the respondent], petitioners omitted from their petition for a writ of certiorari the evidence given at the trial by Herman E. Knight, an officer of Gulf, that commencing in December, 1968, Gulf purchased the fee title to 6,941 acres of coal-bearing lands in the immediate vicinity of plaintiff's mine (R. 738) and also omitted the testimony by Mr. Miner that Gulf purchased around nine or ten thousand acres in the area for the purpose of mining coal (R. 681).

Petitioners further omitted the testimony of Ira W. Palmer that, by late 1968 "most of the land around the Palmer Coal and Rock Company had been purchased or optioned by Gulf" (R. 307) and the testimony of Bill Palmer who testified that a "field" was in fact "put together" by Gulf with the assistance of the respondent's employees, for the operation of a mine in the immediate area of the plaintiff's operation (R. 445-446).

Respondent submits that the foregoing testimony fully satisfied the requirements expressed in *Fox* v. *Wilson*, supra, and that its omission from petitioners' "Statement of the Case" was highly misleading!

II.

The District Court and the Court of Appeals, in conformity to the Erie Doctrine, correctly applied Kansas law in testing the sufficiency of the evidence presented at trial.

Petitioners further seek to persuade this Court to grant a writ of certiorari by posing the question:

"*Can* a Federal Court in a diversity case for common law fraud disregard the applicable state rule of law requiring a clear and convincing degree of proof and apply a preponderance of the credible evidence rule of degree of proof?"

The rulings of *Erie R. Co.* v. *Tompkins*, 304 US 64 (1938); *Guaranty Trust Co.* v. *York*, 326 US 99 (1945); and *Hanna* v. *Plummer*, 380 US 460 (1965), make the answer to such question, *as phrased*, clearly "No".

But no matter how petitioners *phrase* their question, the point is "*Did* the District Court and the Court of Appeals disregard applicable state law in violation of the *Erie* doctrine in *this* case?". The answer to *that* question is *also* clearly "No"!

Petitioners are simply engaging in a game of semantics.

Both the petitioners and the respondent in the case at bar concur that *Fox* is the applicable Kansas law.

The opinions of the District Court (A. 12) and the Court of Appeals (A. 4) make it abundantly clear that the Kansas law embodied in the case of *Fox* v. *Wilson*, supra, was scrupulously adhered to.

The rhetorical question propounded by petitioners as the sole justification for issuance of a writ of cer-

tiorari does not, therefore, require or merit this Court's deliberation.

In the *Fox* case, the Supreme Court of the State of Kansas held that (1) the burden of proving fraud is by a *preponderance of the evidence,* this is a matter of quantum; (2) *the character of the evidence required is "clear and convincing"*, this is a matter of quality; (3) by "clear and convincing evidence" it is meant that the witnesses shall be found to be credible, and that the facts to which they testify are narrated exactly and in due order; (4) the trial court is presumed to have applied the correct standard in the absence of a showing to the contrary; (5) such a "showing to the contrary" is made if the record discloses *no* evidence which could be characterized as clear and convincing; if there is substantial competent evidence of the requisite quality to uphold the findings they will be sustained; and (6) in making such a determination this court considers only the evidence of the successful party (Emphasis added).

There is nothing in the record to support petitioners' contention that the trial court and the Court of Appeals did not adhere to the rule as set forth in the *Fox* case. On the contrary, the trial court instructed the jury in strict accordance with the *Fox* rule, as follows:

> The burden of proof is upon the plaintiff to prove fraud on the part of P & M as alleged, and that as a direct result thereof it suffered damages . . .
>
> Burden of proof means the burden of persuasion. The law of the State of Kansas requires that to prove fraud it is necessary for the party claiming fraud to prove it by *evidence that is clear and convincing;* thus, in this case, the plaintiff must persuade you of the truth of its claim of fraud against the defendants by *clear and convincing evidence.* In determining whether plaintiff has met this burden you must consider all the evidence, whether produced by the plaintiff or the defendants.
>
> To be *clear and convincing,* evidence should be clear in the sense that it is certain, plain to the understanding, unambiguous and convincing in the sense that it is so reasonable and persuasive as to cause you to believe it (Emphasis added).

The elements required to prove fraud under Kansas law were also set forth in the Court's charge to the jury (A. 5).

After instruction by the trial court in accordance with the law of the State of Kansas, and absent any request for additional instructions or objection by the defendants, the jury deliberated for less than two hours and brought in a verdict for the plaintiff.

That the evidence was *"clear and convincing"* to the trial court was established by the Court's holding in its memorandum and order, filed June 11, 1974 (A. 13) wherein the Court stated:

> In determining the legal sufficiency of the evidence *the court has applied the tests set forth in Fox* v. *Wilson,* 211 Kan. 563, 507 P. 2d 252, *and finds* that the defendants' motions for a directed verdict were properly denied at the trial and *that the verdict rendered is supported by clear and convincing evidence* (Emphasis added).

The trial court went on to say, "The jury was fully instructed without objection on the elements of fraud under Kansas law in accordance with PIK (*Pattern Instructions for Kansas*) §§ 14.40 and 14.41."

Further proof that the trial court, who heard all the evidence, was satisfied as to its clear and convincing

nature, is found in the court's statement: *"In view of the evidence,* the punitive damage award, while large, does not . . . in any way shock the conscience of this court" (Emphasis added).

The Kansas Supreme Court, in establishing the *Fox* doctrine, stated that an allowance by the trial court of exemplary damages would be considered as proof of the trial court's satisfaction with the quality and quantity of the evidence presented.

The United States Court of Appeals applied the Kansas law in its review and affirmation of the order of the lower court, when it observed, in its opinion filed November 3, 1975 (A. 5), "The trial court submitted the issues to the jury under instructions specifically setting out the elements allowing recovery for actionable fraud *under Kansas law* and to which no objections were taken." The Court further stated in its opinion (A. 6), "Since *our* review of the record *we are fully satisfied* as was the trial court *that the evidence is completely adequate to support recovery*" and "As we have earlier indicated we conclude that plaintiff made a case, indeed, a *strong* case. Falsity, inducement, reliance and damage are *manifest* and the jury could well infer that P & M at no time intended to keep its promises" (Emphasis added).

Petitioners have utterly failed to recite any language used by the Court of Appeals which would indicate that any test other than as set forth in *Fox* v. *Wilson* was applied to review the trial court's evaluation of the sufficiency of the evidence.

In the absence of such an affirmative showing, the language used by the Court of Appeals, coupled with the traditional presumption of this Court of the employment of appropriate standards of review by Courts

of Appeals, *United States* v. *Wilkinson,* 12 How. 246 (1849); *Connett Lumber Co.* v. *New Amsterdam Casualty Co.,* 236 F. 2d 117 (8th Cir. 1956); *Mercantile Trust Co.* v. *Hensey,* 205 US 298 (1907); *Huddleston* v. *Dwyer,* 322 US 232 (1944); *Kann* v. *United States,* 323 US 88 (1944); *Graver Tank & Mfg. Co., Inc., et al.* v. *Linde Air Products Co.,* 336 US 271 (1949); *Graham* v. *Brotherhood of Local Firemen & Enginemen,* 338 US 232 (1949); *Besser Mfg. Co.* v. *United States,* 343 US 444 (1952); *Federal Trade Commission* v. *Standard Oil Co.,* 355 US 396 (1958); *Jones* v. *United States,* 357 US 493 (1958); *Berenyi* v. *District Director, Immigration and Naturalization Service,* 385 US 630 (1967); and *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.,* 392 US 481 (1968), reduces petitioners' unsubstantiated assertion that the Court of Appeals disregarded the *Erie* doctrine to an unwarranted attack upon the intelligence and integrity of the members of the bench of the Tenth Circuit Court of Appeals.

The Supreme Court of the United States has repeatedly ruled that petitions for the issuance of writs of certiorari will not be granted for the purpose of affording disappointed litigants a review of the evidence which has already been examined and found sufficient by both the District Court and the Court of Appeals. *Layne & Bowler Corp.* v. *Western Well Works, Inc.,* 261 U.S. 387 (1923); *Graver Tank & Mfg. Co., Inc., et al.* v. *Linde Air Products Co.,* supra; *Berenyi* v. *District Director,* supra; *NLRB* v. *Pittsburgh S.S. Co.,* 340 US 498 (1951); *Rice* v. *Sioux City Memorial Park Cemetery, Inc.,* 349 US 70 (1955) and *United States* v. *Reliable Transfer Co.,* 421 US 397 (1975). The purpose of the Court's policy was lucidly set forth by Mr. Justice Brennan, writing in *Neil, Warden* v.

Biggers, 409 US 188 (1972) at page 203 thereof, when he stated:

> The "two-court" rule . . . rests upon more than mere deference to the trier of fact who has a first hand opportunity to observe the testimony and to gauge the credibility of the witnesses. For the rule also serves as an indispensible judicial "time-saver" making it unnecessary for this Court to waste scarce time and resources on minor factual questions which have already been accorded consideration by two Federal Courts and whose resolution is without significance except to the parties immediately involved.

CONCLUSION

Petitioners' request for the issuance of a writ of certiorari, viewed objectively, is nothing more than a request for a fourth review of the evidence in this case.

A reading of the opinions of both the District Court and the Court of Appeals makes it obvious that the standard required under the laws of Kansas was applied in determining the sufficiency of Respondent's evidence.

The writ should be denied.

Respectfully submitted,

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CERTIFICATION

I certify that on this 2nd day of March, 1976, three true and correct copies of the above and foregoing Brief in Opposition to Petition for a Writ of Certiorari were placed in the United States mail, postage prepaid, to Weeks, Thomas, Lysaught, Bingham & Mustain, Chartered, Home State Bank Building, Minnesota Avenue at Fifth, Kansas City, Kansas 66101 and to Donald E. Willson, 1720 South Bellaire Street, Denver, Colorado 80222, attorneys for petitioners. All parties required to be served have been served.

FORREST E. SHORT
Attorney for Respondent